

Syllabus

IN THE MATTER OF

NORMAN COLLINS AND ROY MONTGOMERY, TRADING
AS WASHINGTON BREEDERS ASSOCIATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5196. Complaint, July 25, 1944—Decision, July 11, 1946

A United States record of performance breeder or hatchery is understood by members of the poultry industry to be one operating under an official State agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture, under what is known as the National Poultry Improvement Plan.

The National Poultry Improvement Plan as approved by the Secretary of Agriculture has for its objective, among other things, improvement in the production and breeding qualities of poultry and authoritative identification of breeding stock, hatching eggs and chicks, with respect to quality by describing them in terms uniformly accepted in all parts of the United States.

Certain official terminology, described by the National Poultry Improvement Plan, as "United States Record of Performance" or "Record of Performance" and the abbreviations thereof, "U. S. R. O. P." and "R. O. P.", has acquired definite meaning throughout the industry and trade and when used to describe specified fowls indicates that each thereof had an official performance or lineage record.

Where two partners, engaged in the interstate sale and distribution of chickens and baby chicks—

- (a) Falsely represented, directly or by implication, through statements in newspapers and trade journals, and in advertising folders, pamphlets, circular letters, and other advertising media, that they were United States Record of Performance breeders and operated poultry breeding plants or hatcheries under the supervision of an official State agency supervising the National Poultry Improvement Plan administered by the Bureau of Animal Industry, United States Department of Agriculture, in cooperation with official state agencies; and
- (b) Falsely represented, as aforesaid, that their testing tolerance for pullorum or bacillary white diarrhea disease was "exactly 10 times as stringent" as the requirements of the National Poultry Improvement Plan for testing for pullorum or bacillary white diarrhea disease;

The facts being that aforesaid plan, under the designation "Pullorum control", provided four classifications, the first two of which permitted maximum tolerances of less than 10 percent and 2 percent respectively, the third of which permitted no reactors at all on the last test, and the fourth of which permitted no reactors in either of two tests not less than 6 months apart, the later test being made within the testing year immediately preceding the date of sale of hatching eggs, chicks, or breeding stocks;

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With tendency and capacity, through failure to indicate that their testing program was more stringent only as to certain classifications, while less stringent as to others, to mislead purchasers into the belief that their said program was more strict than the entire program of the National Poultry Improvement Plan;

(c) Represented falsely that their concern was an association of breeders having a number of branches, that it was operated by a manager and associate manager, and that their chicks were produced by their own flocks, through use of the trade name "Washington Breeders Association" and statements in advertising matter, and through designating the partners as "Manager" and "Associate Manager", respectively;

The facts being that they were merely a copartnership with no branches or subsidiary concerns, the principal business of which was the operation of a commercial hatchery, in which a substantial portion of its chicks were hatched from eggs purchased from outside sources;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of causing it, because of such mistaken belief, to purchase substantial quantities of said chickens and baby chicks:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceiving acts and practices in commerce.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Jesse D. Kash for the Commission.

MacBride & Williams and *Little, Leader, LeSourd & Palmer*, of Seattle, Wash., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Norman Collins and Roy Montgomery, individuals trading as Washington Breeders Association, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Norman Collins and Roy Montgomery are individuals trading and doing business under the name and style of Washington Breeders Association, with their office and principal place of business located at Alderwood Manor, in the State of Washington.

PAR. 2. Respondents are now and for several years last past have been engaged in the sale and distribution of chickens and baby chicks.

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Respondents cause their chickens and baby chicks, when sold by them, to be transported from their aforesaid place of business in the State of Washington to purchasers thereof located in various other States of the United States.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said chickens and baby chicks in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their chickens and baby chicks, respondents have circulated and are now circulating among prospective purchasers throughout the United States, by United States mails, advertisements in newspapers and trade journals, and by advertising folders, pamphlets, circular letters, catalogs, and other advertising material, many false statements and representations concerning their product. Among and typical of such false statements and representations disseminated as aforesaid are the following:

WASHINGTON OKd CHICKS

Washington Breeders Assn.

DEMONSTRATION FARM

In addition to our own breeding operations we have used the best available R. O. P. stock for periodic outcrossing, principally the J. A. Hanson Oregon strain.

ROCKS—Genuine J. W. Parks Barred Plymouth Rocks and Rutter R. O. P. White Rocks. Pedigreed trapnest record males of 211 to 300 egg records direct from these two most famous breeders produce our Special grade chicks in these two breeds.

A better grade of chicks * * * Better because "Washington O. K.'d" under newest improvement program.

We have bloodtested for many years to stop transmissible disease (Pullorum or "BWD") at its source, * * * Our testing tolerance is exactly 10 times as stringent as required of hatcheries to qualify under the U. S. Pullorum tested program of the National Poultry Improvement Plan.

Washington Leghorns * * * For more than 20 years our foundation stock has been painstakingly trapnested and pedigreed for all the qualities the poultrymen need for greater success.

New Hampshires for Layers * * * We have done our trapnesting and pedigreeing since 1939, * * * If bought primarily for egg production or breeding the Special grade will be the best. They are all from individually pedigreed males of dams of records of 200 to 275 eggs, mated to advanced R. O. P. males * * *.

Depiction of "World Record 5-bird pen," accompanied by the following statement:

World Record 5-bird pen, national contest at Glen Ellyn, Illinois, 1927-28, bred by the originator of our strain and incorporated into Demonstration Farm foundation stock.

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Depictions of three White Leghorn hens and a number of trophies, accompanied by the following representation:

"Meet The Champs": 1st and 2d highest all-time record holders at N. Y. State national egg laying contest, Long Island, out of over 14,000 birds competing from 1921 to 1936. Lower Right: Leader of 442 entries at California contest, 7 straight months. Below: Trophies of our strain.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that their chickens and baby chicks have received the approval or endorsement of the State agency administering the National Poultry Improvement Plan in the State of Washington; that Washington Breeders Association is a cooperative association composed of various poultry hatcheries and dealers operating as a cooperative association, and that the chicks sold by them are produced by their own flocks; that they operate a demonstration farm whereon they demonstrate improved methods of breeding, producing and caring for poultry for the benefit of poultry producers generally; that they are United States Record of Performance poultry breeders and operate poultry breeding plants under the supervision of an official for the agency supervising the National Poultry Improvement Plan administered by the Bureau of Animal Industry, United States Department of Agriculture, in cooperation with official State agencies; that they produce a better grade of chicks under the newest poultry improvement programs sponsored and approved by the State agency administering the National Poultry Improvement Plan in the State of Washington; that their chickens and baby chicks have been bloodtested for pullorum or bacillary white diarrhea disease by methods and under a program that are 10 times more stringent than the methods and program provided in the National Poultry Improvement Plan and that their chickens and baby chicks are 10 times as free of pullorum and bacillary white diarrhea as are United States pullorum tested flocks generally; that they have for more than 20 years trapnested and pedigreed their foundation stock of Washington Leghorn chickens; that their New Hampshire chickens have been trapnested and pedigreed since 1939, and that their New Hampshire baby chicks are the progeny of pedigreed males of dams with records of 200 to 275 eggs, mated to R. O. P. males; that they are the holders of the world record 5-bird pen national contest depicted on pages 3 and 5 of booklet entitled "Chicks with a future" and that the breeding and qualities of the prize-winning hens pictured on said pages and of the poultry which won the trophies shown on page 5

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of said booklet are concentrated in the chickens and baby chicks of the respondents, and that they were awarded the trophies.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' chickens and baby chicks have not received the approval or endorsement of the official poultry agency administering the National Poultry Improvement Plan in the State of Washington. Respondents are not operating as a cooperative breeders' association but are conducting their business as a copartnership and as a private enterprise operated for profit. Very few of the chicks sold by them are produced by their own flocks. Their principal business is that of operating a commercial hatchery in which chicks are hatched from eggs purchased by them from outside sources. Their limited breeding facilities are not such as to be properly designated or referred to as a demonstration farm, and they do not demonstrate improved methods of breeding, producing, and caring for poultry for the benefit of poultry producers generally. Respondents are not United States Record of Performance poultry breeders and do not operate poultry breeding plants under the supervision of an official for the agency supervising United States R. O. P. work in the State of Washington. Respondents do not produce a better grade of chicks under the newest improvement program sponsored by the State agency administering the National Poultry Improvement Plan in the State of Washington. Respondents' method of blood-testing is not 10 times as stringent as required by the United States pullorum tested program of the National Poultry Improvement Plan, and their chickens and baby chicks are not 10 times as free of pullorum as are United States pullorum tested chickens or baby chicks. Respondents have not trapnested and pedigreed their foundation stock of Washington Leghorns for more than 20 years. They have not trapnested and pedigreed their New Hampshire foundation stock since 1939, and baby chicks produced from foundation stock New Hampshires are not the progeny of individual pedigreed males of dams of records of 200 to 275 eggs mated to R. O. P. males. The trapnesting done by respondents is so limited as to be substantially without value and such trapnesting as they actually do is negligible as compared with their total sales. Outside poultry raisers supplying eggs to respondents do not trapnest their hens. Respondents are not the holders of the world record 5-bird pen as depicted on pages 3 and 5 of their pamphlet entitled "Chicks With A Future." This record was held by others long prior to the time respondents began business; and the breeding and qualities of the prize-winning hens depicted on said pages and of the poultry which

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won the trophies shown on page 5 of said booklet are not concentrated in respondents' chickens and baby chicks, and said trophies were not awarded to respondents.

PAR. 6. A United States R. O. P. breeder is understood by members of the poultry industry to be one operating a poultry breeding plant under the official State agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture. United States R. O. P. embraces records of egg production and body weight made on the breeder's premises under official supervision and similar records made at officially conducted egg-laying contests when such records are passed upon by the official State inspector or official State supervisor and when the individual birds meet other United States Record of Performance requirements. Chicks and hatching eggs produced under said plan lose their identity as provided by the rules and regulations whenever purchased for resale by one not participating in the plan.

PAR. 7. The use by the respondents of the words "Breeders Association" in the trade name "Washington Breeders Association" and in their advertising material has created confusion in the minds of the purchasing public and has led the purchasing public to believe that said organization is a cooperative poultry breeders association united in a common effort and purpose to advance and improve methods of breeding chickens and to disseminate knowledge thereof among members of the poultry industry.

PAR. 8. The use by the respondents of the acts and practices herein set forth has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' chickens and baby chicks.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 25, 1944, issued and subsequently served its complaint in this proceeding upon the respondents, Norman Collins and Roy Montgomery, individuals trading as Washington Breeders Association, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the pro-

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visions of said act. After the issuance of said complaint and the filing of the answer of the respondents thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were taken before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Norman Collins and Roy Montgomery, are individuals trading and doing business under the name and style of Washington Breeders Association, with their office and principal place of business located at Alderwood Manor in the State of Washington.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the sale and distribution of chickens and baby chicks. Respondents cause their said chickens and baby chicks, when sold by them, to be transported from their aforesaid place of business in the State of Washington to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said chickens and baby chicks in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their chickens and baby chicks, respondents have made false, deceptive, and misleading statements and representations concerning their products in advertisements in newspapers and trade journals and in advertising folders, pamphlets, circular letters, and in other advertising media. Among and typical of such false statements and representations disseminated as aforesaid are the following:

ROCKS—Genuine J. W. Parks Barred Plymouth Rocks and Rutter R. O. P. White Rocks. Pedigreed trapnest record males of 211 to 300 egg records direct from these two most famous breeders produce our Special grade chicks in these two breeds.

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We have bloodtested for many years to stop transmissible disease (Pullorum or "BWD") at its source * * * Our testing tolerance is exactly 10 times as stringent as required of hatcheries to qualify under the U. S. Pullorum tested program of the National Poultry Improvement Plan.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein respondents represent, directly or by implication, that they are United States Record of Performance breeders and operate poultry breeding plants or hatcheries under the supervision of an official State agency supervising the National Poultry Improvement Plan administered by the Bureau of Animal Industry, United States Department of Agriculture, in cooperation with official State agencies and that respondents' testing tolerance for pullorum or bacillary white diarrhea disease is exactly 10 times as stringent as the requirements of the National Poultry Improvement Plan for testing for pullorum or bacillary white diarrhea disease.

PAR. 5. A United States Record of Performance breeder or hatchery is understood by members of the poultry industry to be one operating under an official State agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture, under what is known as the National Poultry Improvement Plan. The National Poultry Improvement Plan as approved by the Secretary of Agriculture has for its objective, among other things, improvement in the production and breeding qualities of poultry and authoritative identification of breeding stock, hatching eggs and chicks, with respect to quality by describing them in terms uniformly accepted in all parts of the United States. Certain official terminology described by the plan, such as "United States Record of Performance" or "Record of Performance" and the abbreviations thereof, "U. S. R. O. P." and "R. O. P.," has acquired definite meaning throughout the industry and trade and when used to describe specified fowls indicates that each thereof has an official performance or lineage record.

PAR. 6. In truth and in fact, respondents are not United States Record of Performance poultry breeders and do not operate poultry breeding plants under the National Poultry Improvement Plan. The testing tolerance followed by the respondents in bloodtesting for pullorum or bacillary white diarrhea is not 10 times as stringent as required by hatcheries to qualify under the program of the National Poultry Improvement Plan. Under the designation of "Pullorum control" the National Poultry Improvement Plan provides for various classifications of fowls tested for pullorum disease. The first classification so provided is "U. S. pullorum-tested," in which class are placed

all fowls tested for pullorum disease, which tests permitted the maximum tolerance for U. S. pullorum-tested flocks of less than 10 percent prior to 1941. The second classification is known as "U. S. pullorum-control" class, in which the maximum tolerance must be less than 2 percent. The third class is known as "U. S. pullorum-passed" class, in which class no reactors at all remain on the last test; and the fourth and final class is "U. S. pullorum-clean" class, in which flocks to be so designated must not contain reactors in either of two consecutive tests not less than 6 months apart, the last test being made within the testing year immediately preceding the date of sale of hatching eggs, chicks, or breeding stocks. The practice of the respondents of referring to the pullorum-testing program of the National Poultry Improvement Plan generally, without indicating that their testing program is more stringent only as to certain classifications and less stringent as to others, has the tendency and capacity of misleading purchasers and prospective purchasers into the belief that respondents' testing program is more strict than the entire program of the National Poultry Improvement Plan.

PAR. 7. In addition to the acts and practices hereinabove, described, the respondents, through the use of the trade name "Washington Breeders Association" and by means of statements and representations in their various advertising material, have falsely represented the size and nature of their business. By means of such trade name and other representations, the respondents represent that their concern is operated by manager and associate manager and that the chicks sold by their concern are produced by their own flocks. In furtherance of such representations, the respondent Norman Collins is designated as "manager" and the respondent Roy Montgomery as "associate manager." In truth and in fact, respondents' organization is not a group of concerns engaged in the business of breeding poultry and is not an "association" as understood by the public and by members of the industry, but, instead, is a copartnership composed of the respondents, Norman Collins and Roy Montgomery. Said copartnership does not have any branches or subsidiary concerns connected with it and does not own all the flocks from which its chicks are produced. Instead, the principal business of the copartnership is the operation of a commercial hatchery in which a substantial portion of its chicks are hatched from eggs purchased by it from outside sources.

PAR. 8. The use by the respondents of the acts and practices herein set forth has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and claims are

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true and causes, and has caused, a substantial portion of the purchasing public because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' chickens and baby chicks.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence in support of the complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, that the respondents, Norman Collins and Roy Montgomery, individually and trading as Washington Breeders Association or trading under any other trade name, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of chickens and baby chicks or other poultry in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents are R. O. P. poultry breeders or that they operate a poultry plant under the supervision of an official from the agency supervising United States Record of Performance work.

2. Representing that the tolerance allowed by the respondents in testing for pullorum or bacillary white diarrhea is more stringent than that allowed under the National Poultry Improvement Plan; provided, however, that if a comparison is made between the tolerance followed by respondents and that of any particular classification under the National Poultry Improvement Plan, then the classification so used for comparison shall be definitely and clearly stated.

3. Using the term "Washington Breeders Association" or the term "Association" or any other term of similar import or meaning in

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respondents' trade name or in any other manner to designate or describe respondents' business.

4. Representing, directly or by implication, that the respondents are an organization composed of a group of concerns engaged in the business of breeding poultry.

5. Representing, directly or by implication, that chicks produced from eggs purchased from other suppliers are in fact produced by respondents' flocks.

It is further ordered, that this order shall not be construed as prohibiting representations that respondents' baby chicks are R. O. P. sired when such chicks have actually been sired by males which have been officially banded with U. S. R. O. P. sealed and numbered official leg bands and duly registered as such; or representations that the flocks supplying the eggs from which the baby chicks are hatched are headed by R. O. P. males when the flocks concerning which such representations are made are segregated and headed by such officially banded R. O. P. males; *provided, however*, that such representations are not made in such a manner as to represent, directly or by implication, that the baby chicks so offered for sale are U. S. R. O. P. chicks, or that the respondents are participants in the National Poultry Improvement Plan.

It is further ordered, that the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

CURTIS-ELLIOTT, INC. AND LEROY H. HUTTNER

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5231. Complaint, Oct. 6, 1944—Decision, July 11, 1946

Where a corporation and an individual—its president, treasurer and principal stockholder—who controlled and directed its policies and practices, engaged in the competitive interstate sale and distribution of watches and jewelry—
Sold and distributed said products to the public by means of lottery sales plans and methods, including a so-called club plan under which each customer participant who contracted to pay \$45 in weekly installments for jewelry or a watch, received a so-called advertising or gift coupon bearing a certain number and date, which entitled him during a period of 50 weeks, to a chance to receive \$1,000, \$200, \$100, \$50, \$25, \$5 or \$1, whenever the number on the coupon corresponded with the figures making up the total weekly sales on the New York stock exchange as published in the Monday New York Times; contrary to an established public policy of the United States Government and in competition with many who did not use sales plans involving chance or lottery or contrary to public policy;

With the result that many persons were attracted by said sales plans and the element of chance connected therewith, and were thereby induced to purchase said jewelry and watches in preference to those of said competitors, and with a tendency and capacity thereby to unfairly divert trade in commerce from their said competitors, whereby substantial injury was done by them to competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. Andrew B. Duvall*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Herbert G. Kreisberg, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Curtis-Elliott, Inc., a corporation and Leroy H. Huttner, an individual, and officer of Curtis-Elliott, Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Curtis-Elliott, Inc., is a corporation organized and doing business under and by virtue of the laws of the